

Harmony with Nature: towards a new deep legal pluralism

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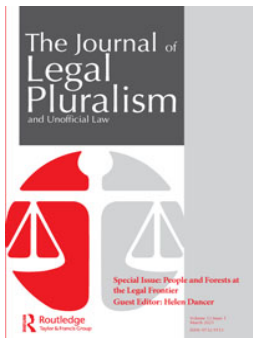
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Harmony with Nature: towards a new deep legal pluralism

Helen Dancer 

School of Law, Politics and Sociology, University of Sussex, Brighton, UK

ABSTRACT

Through a lens of legal pluralism, this article examines the histories, ontologies and discourses that have shaped two contrasting approaches to human-Earth relations in debates and legal frameworks for sustainable development. Anthropocentric discourses of nature as service-provider underpin the dominant approaches within ecology and economics. Ecocentric discourses of Nature as subject are reflected in Rights of Nature movements, particularly in the Americas, and at an international level, in the United Nations Harmony with Nature Programme. Drawing particularly on examples from forest governance in global and national contexts, this article analyses the ways in which international organisations and states have instrumentalised and embedded these discourses in law and policy and reflects on the challenges and possibilities for pluricultural legal orders, Rights of Nature and sustainable development. Moving away from conventional understandings of rights and entitlement to natural resources, the article argues for a deep legal pluralism that both decentres anthropocentric thinking on the environment and decentres the state in the development of Earth law. This places responsibility for the environment and the equitable sharing of power at the heart of legal frameworks on human-Earth relations and recognises the diversity of ontologies that shape these relationships in law and practice.

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Introduction

The last fifty years of Earth's history have been characterised by a period of unprecedented levels of human impact on the planet. While anthropogenic impacts became widespread during seventeenth century colonialism and industrialisation, the scale and significance of what some scientists term “the Great Acceleration” from the mid-1960s onwards has been argued as a scientific baseline for the beginning of the Anthropocene Epoch (Lewis and Maslin 2015). As part of the international response to what has become a crisis for climate change and biodiversity, global discourses centred on environmental sustainability have evolved and been instrumentalised to create opportunities

CONTACT Helen Dancer  H.E.Dancer@sussex.ac.uk

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for intervention. These discourses have proved to be persuasive. Discourses influence our ontological worldviews, shape law and policy priorities and - in the context of human-Earth relations - human behaviours and impacts on the planet. Literature on environmental governance highlights a range of economic, regulatory and ecosystem-specific discourses that have proved influential over the past fifty years (Hajer 1995; Hajer and Versteeg 2005; Feindt and Oels 2005; Bäckstrand and Lövbrand 2006; Arts et al. 2010; Nielsen 2014). Much of the focus of these authors has been on the clash of economic, technological, and civic environmentalist approaches to managing global growth. As discourses, they have contributed to different framings of human-Earth relationships in law and policy debates, which I distinguish as anthropocentric discourses of nature as service-provider, and Earth-centred discourses of Nature as subject.

Within international frameworks for sustainable development, nature as service-provider has emerged as the dominant discourse. It is reflected in the economics language of ecosystem services and recognises the productive value of the environment to humans. In the context of forests, it underpins agendas of the UN Forum on Forests and the UN-REDD+ programme (Reducing emissions from deforestation and forest degradation, conservation of existing forest carbon stocks, sustainable forest management and enhancement of forest carbon stocks). It also forms the basis of many national frameworks for forest governance. Nature as subject developed within the same time period but it has emerged more recently as a discourse that has become embedded in legal frameworks, most notably the Constitution of Ecuador (2008), and in the dialogues of the UN General Assembly's Harmony with Nature Programme. Throughout this article, I adopt the approach of the UN Harmony with Nature Programme and many Earth law scholars, in making a distinction between the anthropocentric conceptualisation of nature (in lower case) and the recognition of Nature as subject (capitalised).

Through a lens of legal pluralism, this article examines the histories, ontologies, discourses and laws that have shaped these different responses to sustainable development agendas. Drawing particularly on examples from forest governance in international and national contexts, the article analyses the ways in which states have instrumentalised and embedded these discourses in law and policy, and the inherent tensions in anthropocentric and state-centralist models of environmental governance. While both approaches respond to sustainable development agendas, questions arise as to how effective they have been in regulating human-Earth relations, and how to ensure that the voices and knowledges of local communities and Indigenous Peoples are recognised in legal frameworks for Earth democracy.

The first and second sections present an analytic description of the origins and contemporary legal significance of the two discourses. The third section reflects on how they have been adopted by the UN Forum on Forests and the UN Harmony with Nature Programme. The fourth section draws on legal pluralism theories to critique the approaches and points towards a future direction for legal pluralism studies. It argues that a double colonisation of people and Nature has taken place in circumstances where states have instrumentalised service-provider discourses and Earth-centred law in pursuit of their own agendas. However, more recent case law suggests a growing willingness of courts to uphold Rights of Nature in practice. The article

concludes that for sustainable development and the wellbeing of people and the Earth to be realised, widespread commitment is needed to recognise, respect and protect the diversity of human-Earth relations. My argument is that this requires deep legal pluralist approaches that decentre anthropocentric thinking on the environment and decentre the state in the development of Earth-law. This places responsibility for the environment and the equitable sharing of power at the heart of legal frameworks on human-Earth relations and recognises the diversity of ontologies that shape these relationships in law and practice.

The dominant discourse: nature as service-provider

The idea that nature can be valued in economic terms as a service-provider dominates contemporary global policy discourses on environmental governance. Anthropocentric in its standpoint, the concepts of natural capital and ecosystem services find their origins in United States (US) ecological and economic theory and were developed as a means to prevent environmental degradation and safeguard human wellbeing. The scientific and philosophical roots of these theories are much older. Adams and Mulligan trace the “rational management” of nature as a resource back to the development of the discipline of ecology in the nineteenth century and its utilisation as part of the colonial encounter, particularly in the context of timber exploitation (Adams and Mulligan 2003, 26). The earlier underpinnings of this approach came from a lineage of European philosophy, beginning with Plato’s dualist view of the world and Aristotle’s “Great Chain of Being,” and Judeo-Christian and Islamic texts that declared the Earth to be a God-given dominion for mankind with humans at the apex of a hierarchical ordering of species (Marshall 1996).

The concept of natural capital was first promoted by Vogt (1948), with the corollary concept of ecosystem services emerging in the 1970s (Bekessy et al. 2018). The language of natural capital and ecosystem services mirrors the classical economics language of stocks and flows. Natural capital is a stock that may be retained as capital or liquidated as inventory, for example trees as a habitat for wildlife, or as timber (Binner et al. 2017). Ecosystem services tend to be divided into regulating, provisioning, cultural and supporting services. They are conceptualised as generated from natural capital “when ecosystems directly or indirectly contribute towards meeting human needs” (MEA 2005). The concept has moved from a descriptive concept to an analytic science, using cascading models where the benefits to human wellbeing are identified at the point where an ecosystem service is harvested by humans (Small, Munday, and Durance 2017). It promotes a “production metaphor” of human-environment relations that seeks to maximise human benefits (Cooper et al. 2016). In the context of forests, this production metaphor is encapsulated in the UK Forestry Commission’s description of the environment as “a complex natural factory engaged in a myriad of productive processes”:

... trees are an environmental good which feed into the human production functions to produce timber, using labour input from a forester. Timber is then crafted by a carpenter using tools to produce furniture which is sold on to consumers, who gain welfare from its use (Binner et al. 2017).

The need to merge ecology and economics in environmental decision-making was emphasised in the landmark 1987 report of the Brundtland Commission *Our Common Future* (Brundtland 1987). This underpinned agenda-setting on sustainable development and global forest policy at the 1992 Rio Earth Summit for the decades that followed. The summit culminated in the UN Convention on Biological Diversity (CBD) and the UN Framework Convention on Climate Change (UNFCCC), as well as Agenda 21 and the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests (“the Forest Principles”) and other significant frameworks for environmental governance. The Preamble to CBD itself begins by recognising both the “intrinsic value” of biological diversity, and its value to humans. Related policy declares “sustainable use” to be “a new philosophy for the 21st century,” but the lens for implementation is an anthropocentric “ecosystem approach,” where “nature’s cupboard” is a resource and species “perform” “ecological services” that support a habitable planet. The following passage from an official policy document that accompanies CBD illustrates the influence of the nature as service-provider discourse:

Protecting biodiversity is in our self-interest. Biological resources are the pillars upon which we build civilizations ...

Our need for pieces of nature we once ignored is often important and unpredictable. Time after time we have rushed back to nature’s cupboard for cures to illnesses or for infusions of tough genes from wild plants to save our crops from pest outbreaks. What’s more, the vast array of interactions among the various components of biodiversity makes the planet habitable for all species, including humans. Our personal health, and the health of our economy and human society, depends on the continuous supply of various ecological services that would be extremely costly or impossible to replace ... (CBD 2000, 3–4)

Ecosystem services became institutionalised as a global discourse from the 1990s onwards, particularly with the launch of the Millennium Ecosystem Assessment (MEA) in 2001 and its synthesis report in 2005 (MEA 2005) and more recently, the Conceptual Framework of the Intergovernmental Platform on Biodiversity and Ecosystem Services (Chaudhary et al. 2015; Diaz et al. 2015; IPBES 2013; Brondizio et al. 2019). By 2012, natural capital accounting had become the UN statistical standard, with its adoption by the UN System of Environmental-Economic Accounting – Central Framework (SEEA-CF). The 2015 UN Sustainable Development Goals also integrated the concept in Goal 15 ‘Life on land’, which aims “to ensure the conservation, restoration and sustainable use of ... ecosystems and their services.”

In the context of forests, the service-provider discourse appears in the five Strategic Goals and Aichi Biodiversity Targets launched at the beginning of the UN Decade on Biodiversity (2011–2020), and in the terminology of CBD’s sister Convention, UNFCCC, with the ultimate objective “to achieve ... stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (Article 9). Living forests are conceptualised as a kind of “sink” that removes and stores greenhouse gases from the atmosphere (Löwbrand and Stripple 2011; Zelli, Gupta, and Van Asselt 2013). This utility construction of forests as a sink for carbon capture has been adopted

consistently in subsequent international strategic frameworks on climate change, including Article 5 of the 2015 Paris Agreement on Climate Change. It underpins the rationale for the UN-REDD Programme and UN-REDD+, a results-based payments system of carbon credits for developing countries created in 2008. This technical approach to forest management illustrates what Delabre et al identify as a “political lock-in,” where the socio-ecological and spiritual importance of forests to humans is not sufficiently recognised (Delabre et al. 2020; see also Krause and Nielsen 2019).

Critiques of the concept of ecosystem services have come from a variety of ecological, strategic, political efficacy and social perspectives (Kull, de Sartre, and Castro-Larrañaga 2015). They point out that even within the ideological boundaries of its own conceptual framework, it has failed to instrumentalise all dimensions of human-environment relationships, such as human mental wellbeing and so-called cultural ecosystem services or done so inadequately. Quantifying non-economic benefits is inherently problematic. As Fish et al argue, the challenge with valuing something non-economic, such as culture, in monetary terms is that we potentially transform the idea of culture itself in the process (Fish, Church, and Winter 2016). As an instrumentalist discourse it is unsuitable for valuing the intrinsic or relational values that in practice have been found to be more important and enduring across societies and generations (Schwartz 2012; Small, Munday, and Durance 2017). It does not account for aesthetic, spiritual and moral values that express human-Earth relations in terms of duty, care, and responsibility (Cooper et al. 2016). Measurements of biodiversity value are also limited by their anthropocentrism in that they are unable to adequately account for the intrinsic value of ecosystems to nonhuman living entities. The next section explores how Earth-centred approaches have theorised and represented these intrinsic values in human-Earth relations through discourses of Nature as subject.

The emergence of Earth-centred discourse: Nature as subject

Earth-centred discourse in Western conservation movements, jurisprudence and ethics developed throughout the same historical period as the concepts of natural capital and ecosystem services. However, holistic socio-cultural human-Earth relationships have existed in human societies and civilisations around the globe for millennia. Taoism dating back to the sixth century BC, as well as Hinduism, Jainism and Buddhism all share a view of humans as integral to a universal undefinable energy and organic whole, with a reverence for all life and living things. The Ancient Greek Earth goddess, Gaia, Ancient Celtic belief systems in Europe and the cosmovisions of many Indigenous Peoples today centre on respect for Mother Earth (Marshall 1996). In this light, while the idea of Earth-law within international and state governance appears to be recent, it is not novel, but rather latent and emergent.

Holistic discourses within the global environmental movement since the 1970s have propelled the debate forward towards the recognition of Nature as subject and rights-bearer, in twenty-first century legal frameworks. While Vogt (1948) promoted the concept of natural capital, Aldo Leopold (1949) espoused a “land ethic” of humans belonging to the land and contested its commodification. As the concept of

ecosystem services began to take root, at the same time, the activist US Supreme Court Justice William Douglas articulated the importance of “conservation parks” and Nature as a subject with rights in his 1965 book (Douglas 1965) and in his judgment in the 1972 *Sierra Club v Morton*¹ appeal, influenced by Christopher Stone’s ground-breaking article *Should Trees Have Standing?* (Stone 1972). Peter Singer (1975), the deep ecology movement, particularly the writings of Arne Naess (2005) and James Lovelock’s (2006) “Gaia Hypothesis” paved the way for a new era in the development of Western Earth-centred environmental ethics (for a history, see Nash 1989; Boyd 2017). Building on these holistic and relational approaches, Thomas Berry (1999) and Cormac Cullinan (2002) developed legal theories of Earth jurisprudence and wild law, which have proved influential particularly at a UN level.

Earth jurisprudence draws attention to the anthropocentrism of law, its prioritising of private property and inequalities in social relations. More distinctively, as Burdon observes, Berry’s work, which is seen as the foundation of contemporary Earth jurisprudence, is greatly influenced by the natural law tradition of Thomas Aquinas. According to Aquinas, God-given eternal law exists at the apex; a second order natural law can be discovered by humans through reasoning and deduction for the common good of society. Berry bases his theory on quite a similar idea, but unlike the Judeo-Christian hierarchical order of mankind at the apex of all other species, he argues that as well as being subordinate to an uncodifiable “Great Law,” human law must serve the common good of the whole Earth community of which humans are part (Burdon 2015). Contrast Berry’s idea of “the universe” as “a communion of subjects, not a collection of objects” with natural capital and property rights approaches to the environment, which tend to see flora, fauna, fungi and entire ecosystems as objects that can be owned and utilised. Indeed, environmental law itself can be said to be anthropocentric because it is based on intra-species legal relations between humans rather than human relationships with the Earth. It restricts aspects of human behaviour, but it treats anything that is not human as an object, not a subject. One example is the polluter pays principle in environmental law, which requires humans to compensate other humans for the pollution they cause to, for example, a river but which treats the affected river as an object, not a subject with its own right to flow and sustain aquatic life.

If, as Berry suggests, the universe is a communion of subjects, then those subjects represent members of an Earth community. Berry argues that once we understand the Earth community in this way it follows that every member – “every component” – of the Earth community has three rights: “the right to be, the right to habitat and the right to fulfil its role in the ever renewing processes of the Earth community” (Berry 1999). Cullinan’s theory of wild law (Cullinan 2002) is an approach to governance that expresses Earth jurisprudence through Rights of Nature. Cullinan’s theory is underpinned by principles that recognise the fundamental natural right of all beings in the Earth community to exist, to habitat and to participate in its evolution; such rights being contingent and limited by the need to maintain equilibrium of the Earth community. For scholars of Earth jurisprudence, these rights are not reciprocal in terms of relationships of rights and responsibility. To understand rights of subjects in an Earth community, requires us to let go of established conceptions of human

rights. Earth rights as Berry conceptualises them are species-specific and limited. Rivers have river-rights. Trees have tree-rights. Human rights do not cancel out the rights of other modes of being to exist in their natural state. Therefore, the human right to property is not absolute, and the relationship between the Earth and humans is not one of equals, but of whole and a part. As humans, our obligation to Earth is to play a proper role in the functioning of the Earth system as but one of many subjects representing the Earth community.

Rights of Nature law may be understood as a strategy for implementing Earth jurisprudence. Since 2006, Rights of Nature laws have been enacted both as a result of local level activism, and as an overarching plurinational approach to governance that adopts an intercultural administrative structure within the overall state framework. It is significant for a legal pluralist analysis, that the first Rights of Nature legislation anywhere in the world was introduced at a local government level. Tamaqua Borough in Pennsylvania, USA enacted the local ordinance as a direct response to state and federal government law that had rendered the local authority powerless to stop the land application of sewage sludge by corporations (Tanasescu 2016, 107). The Tamaqua Borough Sewage Sludge Ordinance (No. 612 of 2006) legally recognises borough residents, natural communities, and ecosystems as “‘persons’ for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.”

The Community Environmental Legal Defense Fund (CELDF) that led the movement behind the Tamaqua Borough ordinance and several further US ordinances, provided a consultative link for the Ecuadorian Constitutional Assembly on Rights of Nature. Two years later, Ecuador was the first country in the world to enshrine the Rights of Nature and recognise *Pachamama* (Quechua for Mother Earth) and *Sumak Kawsy* (loosely translated as *Buen Vivir* or Living Well) in its 2008 Constitution. The Plurinational State of Bolivia followed, enshrining the Aymara Indigenous principle of *Suma Qamaña* (Living Well) in its 2009 Constitution. It went on to adopt a Law of the Rights of Mother Earth (No. 71 of 2010), which was subsequently updated by a detailed Framework Law of Mother Earth and Integral Development for Living Well (No. 300 of 2012).

Rights of Nature have also been adopted by global coalitions of Indigenous Peoples, NGOs, and legal activists. These include the Earth Charter in 2000, which was a global civil society initiative for Earth democracy (Westra and Vilela 2014), and the Universal Declaration of the Rights of Mother Earth drafted by Cormac Cullinan in 2010. In 2013, the Ecuador-based Global Alliance for the Rights of Nature established the International Rights of Nature Tribunal to hold governments accountable for violations. Hearings are scheduled around the world to coincide with other global meetings on the environment, to raise public and political awareness of the issues that are adjudicated (Maloney 2016). At a grassroots level, several US Native American tribes have also recognised the concept in their own sovereign tribal laws, beginning with the Ponca Nation in 2017, which adopted a Rights of Nature law as an anti-fracking measure; and the Wild Earth band of Ojibwe, which recognised the rights of wild rice and its freshwater habitats.

These examples illustrate that Rights of Nature are the product of dynamic, transnational interactions across multiple scales, encompassing Indigenous and Western

philosophical elements. Sitting between cultural worlds Rights of Nature may be understood as a “fuzzy” mobile concept; “a boundary object connecting translocal assemblages of environmental governance” (Kinkaïd 2019, 559). Alternatively, as Santos argues, they represent a “hybrid” of Indigenous and Western ontologies; the result of processes of interlegality between normative orders at different levels (Santos 1987, 2018). In some ways this hybrid contradicts Indigenous ideas about the nature of human relationships with Mother Earth (Santos 2018, 11). For example, the representation of Nature as a legal person fails to capture the conception of the universal as a plurality, or the social and cultural identities of *Pachamama* as collective persons (Vanhulst and Beling 2014; Youatt 2017). However, as Santos observes, while ideas of Rights of Nature remain complex and contested, they may nonetheless be expedient as a legal tool because they resonate with human-rights based approaches that are already well established and socially understood (Santos 2018, 11).

Twentieth century discourses of nature as service-provider and Nature as subject represent contrasting approaches to addressing anthropogenic harms to the Earth. Their influence and implementation through sustainable development agendas raise critical questions concerning the role and power of the state, non-state actors and plural legalities in practice. At an international level, the normative contrast is illustrated in the varying standpoints of UN agencies towards environmental governance. The next section analyses how two UN fora: the UN Forum on Forests and the UN Harmony with Nature Programme have adopted the discourses in their work and considers implications for dialogue and recognition of plural legalities concerning human-Earth relations.

Nature as service-provider and as subject in United Nations fora

The UN Forum on Forests (UNFF) established by the UN Economic and Social Council (ECOSOC) in 2000, is currently the main international meeting-place for UN member states on forest issues and uses nature as service-provider discourse in its frameworks for governance. Its main objective is to promote “the management, conservation and sustainable development of all types of forests and to strengthen long-term political commitment to this end” (UN ECOSOC 2000). To date, there is no global consensus on a binding legal framework for forests. However, an important milestone was the 2007 Non-Legally Binding Instrument on All Types of Forests (which was named the UN Forest Instrument in 2015 and renamed as the International Arrangement on Forests (IAF) in 2016). Conceived in the same year as UN-REDD, the four Global Objectives of IAF are broader in scope than the focus on carbon capture. However, UNFF frameworks for governance, including the Global Forest Financing Facilitation Network (GFFFN) of 2015 and the first UN Strategic Plan for Forests 2030 in 2017, touch relatively briefly on the rights and roles of Indigenous Peoples in forest governance. Rights of Nature were not included. The furtherance of social and cultural issues such as Indigenous Peoples’ rights, gender equality, labour rights, ecotourism, and the spiritual significance of forests, are not embedded within the Strategic Plan itself. Instead, UN bodies specialising in these fields “are invited to use the strategic plan as a reference, with a

view to building synergies between the global forest goals and targets of the strategic plan and their respective policies and programmes” (UN ECOSOC 2017, para 41).

This puts the onus on wider UN bodies and social movements to continually assert the importance of socio-economic and cultural issues and the rights of Indigenous Peoples. A notable example of this approach was the decision of the UN Permanent Forum on Indigenous Issues (UNPFII) to hold an Expert Group Meeting on Indigenous Peoples and Forests during the International Year of Forests in 2010. However, UNFF’s work is state-centred and continues to focus on the implementation of internationally agreed actions, rather than creating its own democratic spaces for dialogue concerning human-forest relations. Spaces for collaboration across governments, international and non-governmental organisations, scientists, farmers, forest and Indigenous Peoples groups have tended to emerge alongside UNFF fora, such as the voluntary and non-binding New York Declaration on Forests of 2017, and a cross-sectoral 2018 conference of the Collaborative Partnership on Forests chaired by FAO. As Santos argues, it is through opportunities for interknowledge and intercommunication among different struggles and social movements, that “epistemologies of the South” become articulated in globalization processes (Santos 2018, 210). However, this plurality of actors and their diversity of knowledges and experiences has not yet been brought into the mainstream debates.

Earth-centred discourses within the UN system have tended to be framed in terms of “Harmony with Nature” rather than “Rights of Nature.” In 2009 the UN General Assembly proclaimed 22 April International Mother Earth Day in resolution 63/278. In June 2012, the UN Conference on Sustainable Development passed resolution 66/288 to promote Harmony with Nature “in order to achieve a just balance among the needs of present and future generations.” In September 2015 when the UN Sustainable Development Goals were adopted, Goal 12 Target 12.8 also incorporated this language in seeking to “ensure that people everywhere have the relevant information and awareness for sustainable development and lifestyles in harmony with nature.”

Since 2009 the UN General Assembly has passed annual resolutions as part of its Harmony with Nature programme and annual interactive dialogues between international experts to inform its work. In doing so, the programme has sought to bring the diversity of Earth laws and knowledges into global debates on sustainable development. However, as part of a UN organ it operates within the Westphalian principle of international law, which recognises the sovereignty of states. This is reflected in the UN Harmony with Nature GA resolution 21/232 December 2016, which:

Invites states as appropriate:

To promote harmony with the Earth, including as found in indigenous cultures, to learn from those cultures and to support and promote efforts being made from the national level down to the local community level to reflect the protection of nature.

In the Secretary-General’s 2016 note on Harmony with Nature 71/266 it is stated that the first step for Earth-centred law and policy is:

... to include the rights of Nature in our governance systems, not by advancing its interests within the capital system as resources to be exploited, but by recognizing the

fundamental legal rights of ecosystems and species to exist, thrive and regenerate. Nature is regarded as the source of basic “Earth rights” and these rights cannot be validly circumscribed or abrogated by human jurisprudence. These rights are not in opposition to human rights: as part of Nature, our rights are derived from those same rights. The human right to life is meaningless if the ecosystems that sustain us do not have the legal right to exist.

The dialogues and reports recognise the connections between Earth jurisprudence and Indigenous cosmovisions. However, there are challenges in recognising pluricultural legal orders if they become crystallised and implemented through state law. Initially, there is a challenge in creating spaces where a plurality of knowledges can be effectively articulated. Secondly when national laws interact with Indigenous laws, the latter may become assimilated or subverted through moments of “domination” of various knowledges (Santos 2018). However, domination by the state is not an inevitable consequence of processes of interlegality. The next section analyses developments in Earth laws drawing upon examples from the Americas, Africa and New Zealand. The challenge of how to recognise the empirical reality of coexisting legal orders is well understood within legal pluralism studies. However, Earth laws bring an additional level of complexity, because they raise questions of power relations between citizens and state, and between people and the rest of the natural world.

Double colonisation of people and Nature

This section draws on legal pluralism theories to critically reflect on how Earth-centred law has been instrumentalised in national legal frameworks and the consequences for human-Earth relationships. The challenge extends not only to recognising the diversity of human relationships with the Earth, but also to how humans can speak for Nature. On Berry’s theory, the ecological source of Earth jurisprudence is beyond human codification. Translating this philosophy into an approach to governance, Cullinan (2002) also points out that we as humans cannot in fact grant rights to other species because they already have them in a way that is beyond our ability to conceive of them. This means that Earth jurisprudence should be regarded as just one way in which humans could interpret their relationship with the Earth. From a legal pluralist perspective, the point can be framed in this way: there can be no one overarching ecocentric vision or legal system that speaks for human-earth relationships.

The question of who speaks for Nature and the implementation of Earth-centred law is fraught with challenges. It might seem desirable to establish a Universal Declaration and incorporate Earth-centred approaches into state law. Cullinan argues that this approach to implementation is expedient because law operates as a kind of DNA of society and guides its development (Cullinan 2010). He expressly rejects the colonial nature of current legal systems and sees a Universal Declaration of the Rights of Mother Earth as a clear departure from this because it recognises a kind of law that is beyond and superior to human law. However, it would require wider system change to displace postcolonial top-down approaches within international and state law structures. In the UN dialogues on Harmony with Nature some experts have promoted the idea of states as “trustees for the Earth” (UN General Assembly 2017, 4). This reflects the Westphalian principle of state sovereignty and the principle

of Permanent Sovereignty over Natural Resources, both of which are established principles of public international law. However, Earth jurisprudence scholars, Weston and Bollier (2013) and Burdon (2015) critique the idea of tying rights of Nature too closely to the role of the state. They point out that unwritten “vernacular law” as they term it, includes not only the Great Law of Earth jurisprudence but also informal, customary and other sources of law and cosmovisions that are used to test the moral legitimacy of state law.

One of the important contributions that legal pluralism scholarship can make to this debate is the empirical observation that as a matter of social fact there are many non-state normative orders that should be recognised as having the full force of law (Sage and Woolcock 2012; Twining 2012). There are parallels between Weston and Bollier’s critique of state-centred Earth jurisprudence with legal pluralist critiques of legal centralism since the 1980s (Griffiths 1986; Merry 1988; Woodman 1996; Benda-Beckmann 2002). Weston and Bollier’s analysis echoes legal pluralist theories of “deep legal pluralism” (Griffiths 1986) as a critique to the idea of a state-centred model for mediating between the heterogeneity of normative orders. These include Indigenous Peoples’ cosmovisions and customary and religious laws that are intrinsically associated with human-Earth relationships. But if we accept that a notion of the legal is not necessarily dependent on any relation to the state, this leaves more room for uncertainty in terms of how states and international organisations engage with multiple legal orders in practice. Whenever the state defines how law is to be recognised in plural legal contexts, at its strongest the effect can be what Zenker and Hoehne describe as a “jurispathic” act, which “inevitably kills off other normative orientations” in the process (Zenker and Hoehne 2018). Alternatively, non-state law may not be killed off, but rather it becomes transformed into a hybrid (Santos 1987), or “vernacularized” as universalised rights language is reframed by elites and activists to resonate with local communities and layered over grassroots frameworks (Merry 2006). In each case, unequal power relationships involved in any state-centred approach to legal reform lead to the domination of state normative frameworks over others.

This problem extends to the recognition of Earth-centred law in international fora for sustainable development. As a brief survey of human-Earth relations and ontologies around the world shows, there is no universally shared idea of the concept of Nature. Despite this complexity and the need for Indigenous Peoples’ knowledges to be articulated and recognised in international fora, a 2010 study conducted by UNPFII noted that “The indigenous peoples are conspicuously missing from the list of those invited to consider the issue of promoting life in harmony with nature” at the first UN General Assembly resolution 64/196 on Harmony with Nature adopted on 21 December 2009. They were also not mentioned in the UN World Charter for Nature of 1982. The study makes clear that “on an issue so vitally important to them, no resolution should be adopted subsequently without their direct contribution, or through national mechanisms responsible for indigenous issues” (UNPFII 2010, 3). In response to this concern, the annual interactive dialogues on Harmony with Nature that began in 2011 and which discuss the issue within the General Assembly, have regularly included Indigenous Peoples.

More broadly however, the contexts of Indigenous Peoples’ rights, the interactions between the universal human rights system, state law and Indigenous laws have yet

to be resolved in a way that fully recognises the empirical fact of legal pluralism. As Brems notes, both ILO Convention 169 of 1989 concerning Indigenous and Tribal Peoples in Independent Countries and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007 include provisions that recognise a human right to traditional law. However, these rights are made subject to their compatibility with national law and international human rights (Brems 2017). This form of global legal pluralism (Berman 2007; Michaels 2009; Merry 2014) in practice reinforces a hierarchy between different normative orders that is mediated and managed by the state. Indigenous laws have yet to be fully recognised and realised in ways that do not ultimately subvert them to state law. For example, from an Australian Aboriginal perspective, Watson explains “Law stories lie across the land: they are alive and can be revived and regenerated ... The law is my centre, from which my life forms ... Law is sung into place, land, waters, people, the natural world and the cosmos, the sky-world. It is law that I speak of here, not ‘customary law’, lore, myth or story” (Watson 2015, 29–30). Yet there remains a conflict between Aboriginal “Raw Law,” as Watson terms it, and its subversion to the colonial system of the Australian state. This conflict extends to the international level where both UNPFII and UNDRIP have frameworks for governance that are state-centric. As Watson argues, “an international mechanism with the power and capacity to effectively listen to our voices, and to act and intervene for and from a First Nations’ way of being is still urgently required” (Watson 2015, 148). In seeking to listen to Indigenous Peoples’ voices and to develop Earth law approaches as a way forward for sustainable development, international organisations and states will need to ensure that their legal processes and frameworks recognise legal pluralism as an empirical fact.

Despite the aspirations of plurinational states, this double colonisation of people and Nature has occurred in cases where states have instrumentalised the Rights of Nature in pursuit of other agendas. In Ecuador, the ink was barely dry on the new 2008 Constitution before Rights of Nature were brought into conflict with the government’s extractivist agenda to finance development projects. With the passing of the mining law in 2008 and the water law in 2009, Indigenous Peoples and environmental activists criticised the government for twisting the meaning of *Sumak Kawsy* to suit its own agenda (Kauffman and Martin 2017, 132). There was no body of legislation interpreting the new constitutional Rights of Nature, leaving a large gap for judicial interpretation. In an extensive empirical study of the Ecuadorian case law Kauffman and Martin discern four pathways through which Rights of Nature have been developed in practice – civil society pressure, instrumental government action, bureaucratic institutionalisation, and juridical application. Rights of Nature had been affirmed in 100 percent of instances driven by state agendas, but in only 40 percent of cases driven by civil society.

This reveals much about the power and motivation of states, both to make instrumental use of Rights of Nature against less powerful actors to serve state agendas, and to subvert Rights of Nature in favour of national economic development. For example in the Cónдор-Mirador case of 2013² – the first Rights of Nature lawsuit brought by civil society – open-pit mining in the Amazon formed part of the state’s development agenda and was held by the appeal court to be in the public interest despite the Rights of Nature. In another context, when it suited the state’s own

agenda to combat unauthorised artisanal mining practices, the Ministry of the Environment invoked the Rights of Nature successfully against the miners that had caused environmental damage. In the minority of cases where civil society has been successful, it has been in less politicised contexts such as the Vilcabamba River case³ which concerned the discarding of construction debris into a river (Kauffman and Martin 2017). Historically, in the most challenging cases, protecting Nature indirectly using other legal mechanisms appeared to be most effective. For example, in 2019 the Waorani people won their landmark legal victory⁴ to protect half a million acres of Amazon rainforest based on their Indigenous rights to Free Prior and Informed Consent over oil-drilling in their territory.

This chequered track record of outcomes for constitutional Rights of Nature is reminiscent of established weaknesses in human rights law. As human rights scholars (for example, Dembour 2010; Sezgin 2010) have observed, when balancing human rights, customary or religious laws against an argument of state interest, courts have often produced decisions that defer to the latter. While the Ecuadorian Constitution broke new ground by enshrining Rights of Nature, as a legal tool their effectiveness appears to have been weighted in favour of state interests (Lalander 2016). The Bolivian administration of President Evo Morales, once heralded for its environmental activism, ultimately went down a similar trajectory to Ecuador's President Rafael Correa in prioritising extractivism over an approach to development in harmony with ecological cycles and the Aymara principle of *Suma Qamaña* (Eisenstadt 2019; Lalander 2017). As Tola argues, *Pachamama* became instrumentalised and incorporated into the Bolivian state through a process of subordination to state power (Tola 2018). However, in Ecuador this pattern of subordination has shifted in the wake of growing resistance from Indigenous Peoples, NGOs, activist lawyers and international scientists. In 2020, a Constitutional Protection Action was granted by the Multicompetent Unit in Cotacachi in favour of the Rights of Nature to protect two rare endemic species of frog and dozens of other species, whose habitat was threatened by the Llurimagua copper mining project.⁵ This followed a decision of the Provincial Court of Imbabura in another case,⁶ which upheld the Rights of Nature of Los Cedros Protected Forest against mineral extraction. The government's appeal to the Constitutional Court (whose judgment was pending at the time of writing this article) will result in a global precedent on where the ultimate balance lies between the constitutional rights of a forest ecosystem and the power of the state and corporations to exploit national oil and mineral reserves for economic development.

Experiences of the Waorani in Ecuador and Indigenous Peoples elsewhere suggest that ecosystems have often received greater protection when Indigenous Peoples' rights are recognised. Examples of river and forest ecosystems from Benin, Colombia and New Zealand show how the extent of recognition of legal pluralism can be analysed on a scale ranging from anthropocentric, state-centralist to Earth-centred, and deep legal pluralist approaches to their protection. At one end, in Benin, Interministerial Order No. 121 of 2012 Setting the Conditions for the Sustainable Management of Sacred Forests in the Republic of Benin, adopts the first model of its kind in Africa to protect Sacred Natural Sites from extractivism. The order adopts a holistic approach to forest governance, recognising the ecological, economic, socio-

cultural, spiritual and recreational values of Sacred Forests defined as “any forest home to several gods worshipped by the local population. It can be a hunting reserve, a forest of the ancestors, a burial forest, a forest of the gods or spirits, or a forest of secret societies.” In this, there is explicit recognition of the cosmovisions of forest peoples. However, the legal framework is both anthropocentric and weak in its recognition of legal pluralism in practice because sacred forests are legally recognised as “property” of the commune and integrated into the commune’s forestry area through state administrative processes.

A second model from a Colombian Constitutional Court case concerning Tayrona National Park⁷ went further in recognising the Rights of Nature explicitly as part of a plan to restore the ecological health of river, mountain and forest ecosystems, but also recognised the need to protect artisanal fishing livelihoods of the local people. In that case the ecosystem was recognised as having legal personhood, but the legal framework was state centralist as the National Park was governed through National Park legislative frameworks that created asymmetric power relations between the interests of the state and the intrinsic Rights of Nature. A later judgment by Colombia’s Constitutional Court on the rights of the Rio Atrato⁸ set a new Colombian precedent that recognised the “bio-cultural rights” of the river and the local communities living there. The court’s ruling established a Guardian Council of state and civil society representatives and created an oversight commission to protect the river. Significantly, the court did this by invoking normative arguments on Nature as subject to interpret existing laws, despite any explicit Rights of Nature provisions in the Constitution or other national legislation (Kauffman and Martin 2019). Subsequent decisions by the Supreme Court of Justice of Colombia in 2018 and 2020 also declared the Colombian Amazon region⁹ and the forests, beaches and swamps of Vía Parque Isla de Salamanca¹⁰ subjects of rights.

The Colombian Constitutional Court’s Rio Atrato decision was inspired by the model adopted in New Zealand for the Whanganui River. This third model is both ecocentric and deep legal pluralist in its decentring of the state. The New Zealand approach sprung from the long-contested Indigenous rights claims of the Whanganui Māori people living there against expropriation of the land by the colonial state, rather than claims that were at least originally framed in terms of Rights of Nature. However, because Māori regard all elements of the world as related to each other through *whanaungatanga* kinship ties “between people (living and dead), land, water, flora and fauna, and the spiritual world of *atua* (gods),” the legal interests of people and Nature were inextricably bound together in any resolution to the dispute (Waitangi Tribunal 2011; see also Iorns Magallanes 2015, 3). In the case of the Whanganui River, and two other New Zealand cases of the Te Urewera forest and Taranaki Maunga (formerly Mount Taranaki), the notion of property in land was anathema to Māori cosmovisions, which do not recognise any transactional or hierarchical relationship between people and Nature.

In all three contexts, the settlements reached in New Zealand were deep legal pluralist in that not only was the legal personality of Nature recognised, but the river, forest and mountain were each declared to have title to itself which was inalienable. Representation of the river as a legal person operates through a system of guardianship

where the authority to speak (and power) is shared between one representative each of the Crown and the local Māori people. The settlement for Te Urewera and Taranaki Maunga also involves a joint governance arrangement in the interests of the forest and mountain. As Charpleix notes, the legal framework for these settlements operate within the parameters of state legislative processes, including property rights and planning laws (Charpleix 2018). Consequently, they do not rule out the potential for mineral extraction in certain circumstances, for example under the riverbed. However, the outcome of the legal interactions went beyond creating a hybrid concept. The decentring of state dominance in the substance of the legislation¹¹ is arguably the furthest that a contemporary state has gone to decolonising the relationship between people, the state and Nature and recognising deep legal pluralism in Earth law.

Towards a new deep legal pluralism

What does this mean in practice for the adoption of Earth laws in state and international legal frameworks? On the one hand, the turn to Earth law is urgent. A shift away from anthropocentric approaches that represent nature as service-provider, would lead to a radical change in the way that states and industries in the environmental sector think about the Earth and our place within it. As *The State of the World's Forests 2020* report concludes: “Ultimately, we need to foster a new relationship with nature” (UN FAO 2020). However, while the current momentum towards enshrining Rights of Nature in state legal systems has many positives, as a legal tool Rights of Nature can also be used to subvert non-state legal orders and local community interests. Moreover, case law from the Amazon region demonstrates a trend of states pursuing extractivism and harnessing or seeking to override constitutional Rights of Nature against the interests of Indigenous Peoples and local communities, in pursuit of their own development agendas.

For as long as the international legal order is based on principles of state sovereignty, there will remain asymmetries of power between states and people, and between people and Nature. Unless the empirical fact of legal pluralism is integrated into sustainable development frameworks, processes of enveloping or vernacularizing non-state laws and knowledges of human-Earth relations risk a double colonisation of people and Nature. The New Zealand model offers the closest example to date as to how a loosening of legal hierarchies towards deep legal pluralism may be achieved within a national legal order. However, the impetus for this approach came from the fight for Indigenous Peoples’ rights rather than taking the Rights of Nature as the starting point. In other contexts, states will need to find ways of recognising Nature as a legal subject in a way that decentres the state irrespective of whether Indigenous Peoples’ interests are bound with the land in question.

At the international level, the UN Harmony with Nature programme, UNPFII and UNFF are spaces that could integrate deep legal pluralist approaches towards recognising the diversity of human-Earth relations. As Earth law movements gain momentum, there are also calls for Rights of Nature to be integrated into existing international environmental law, such as CBD (Earth Law Center 2020). Such approaches would signify the beginning of system change and expansion from the

established state-centred frameworks and anthropocentric culture of the international legal order. In the context of forests, UNFF is currently the main international meeting-place for UN member states on forest issues. As a forum that seeks to encompass a wide range of ecological, economic, social, and cultural issues concerning forests, it is another important forum for bridging normative divides. However, its first UN Strategic Plan for Forests 2030 in 2017, touches relatively briefly on the rights and roles of Indigenous Peoples in forest governance and the service-provider discourse prevails in its measures of progress. Spaces for collaboration across governments and non-state actors and interest groups have tended to emerge outside central UN fora. More needs to be done throughout the UN institutions to bring the diversity of knowledges into the mainstream of international legal and policy debates.

The philosophy of Earth jurisprudence is important work. It shifts legal theory and established human rights-based approaches away from the anthropocentric and is proving significant in reorienting global policy discourses on sustainable development; but it is one among many legal expressions of human-Earth relationships. To avoid a double colonisation of people and Nature, it is important that people, states, and international organisations remain open to exploring fundamental questions: How could, or indeed should, unwritten laws of the Earth be recognised in human law? Are citizens prepared to let go of the dominant legal paradigm that sees humans as the Earth's only subjects? What sort of power-sharing arrangements could be developed between states, people and other living entities towards sustainable development and living well?

People are integral to this process, both in parts of the world where Earth laws are currently established, and in contexts such as Europe, where Earth law is not yet part of wider public consciousness. Earth law approaches based on shared values that are culturally understood, can be grown from the diversity of spaces where human-Nature connections are being nurtured and rediscovered. These include the arts, museums, schools and universities, media, conservation charities, environmental associations, Forest school and *shinrin-yoku* (forest bathing), community and religious groups, National Parks and other protected landscapes.

As frameworks of Earth law and governance are developed across local, national, and international legal contexts, scholars of legal pluralism will have much to contribute to debates on Earth law and to new directions in legal pluralism studies. I have argued that a new deep legal pluralism is needed, which recognises Nature as subject and decentres the state in favour of an equitable sharing of power over human-Earth relations. The aim should be to find context-specific power-sharing solutions that protect and respect Nature, human rights and relationships with the Earth, and legal and cultural diversity. This could ultimately lead to radical shifts in legal cultures and hierarchies. The integrity of a move towards Earth law depends on a pluralist approach that recognises and promotes the diversity of worldviews and looks for common ground between them.

Notes

1. *Sierra Club v Morton* 405 US 727 (1972).
2. ECUARUNARI, CONFENIAE, CEDENMA, INREDH and Fundación Pachamama v ECUACORRIENTE S.A. (ECSA), State Attorney General, Ministry of the Environment

- and Ministry of Natural Resources 17111-2013-0317 Provincial Court of Pichincha (20 June 2013).
3. Wheeler and Huddle v Director of the Provincial Government of Loja 11121-2011-0010 Provincial Court of Loja (30 March 2011).
 4. CONCONAWEP (Coordinating Council of the Waorani Nationality of Ecuador-Pastaza) and others v Ministry of Energy and Non-Renewable Natural Resources, Ministry of the Environment and others 16171-2019-00001 Provincial Court of Pastaza (26 April 2019).
 5. Terán Valdez v Ministry of Environment and Water and State Attorney General 10332-2020-00418 Multicompetent Judicial Unit in Cotacachi (21 October 2020).
 6. Cevallos Moreno and Almeida Herrera v Ministry of the Environment and others 10332-2018-00640 Provincial Court of Imbabura (19 June 2019).
 7. Pacheco Yáñez v Ministry of Environment and Sustainable Development and others T-606/15 Constitutional Court of Colombia (21 September 2015).
 8. Center for Social Justice Studies (Tierra Digna) and others v Presidency of the Republic and others T-622/16 Constitutional Court of Colombia (10 November 2016).
 9. Lozano Barragán and others v Presidency of the Republic and others STC 4360-2018 Supreme Court of Justice of Colombia (5 April 2018).
 10. Llorente Altamiranda v Presidency of the Republic and others STC 3872-2020 Supreme Court of Justice of Colombia (18 June 2020).
 11. Te Urewera Act No. 51 of 2014; Te Awa Tapua (Whanganui River Claims Settlement) Act No. 7 of 2017; Ngā Iwi O Taranaki and The Crown Te Anga Pūtakerongo/Record of Understanding 20 December 2017.

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ORCID

Helen Dancer  <http://orcid.org/0000-0002-0087-6075>

References

- Adams, W. M., and M. Mulligan. 2003. *Decolonising Nature: Strategies for Conservation in a Post-Colonial Era*. London: Earthscan Publications Limited.
- Arts, B., M. Appelstrand, D. Kleinschmit, H. Pülzl, I. Visseren-Hamakers, R. Eba'a Atyi, T. Enters, K. McGinley, and Y. Yasmi. 2010. "Discourses, Actors and Instruments in International Forest Governance." In *Embracing Complexity: Meeting the Challenges of International Forest Governance. A Global Assessment Report Prepared by the Global Forest*

- Expert Panel on the International Forest Regime*, edited by J. Rayner, A. Buck and P. Katila, 57–73. Vienna: IUFRO.
- Bäckstrand, K., and E. Lövbrand. 2006. “Planting Trees to Mitigate Climate Change: Contested Discourses of Ecological Modernization, Green Governmentality and Civic Environmentalism.” *Global Environmental Politics* 6 (1): 50–75.
- Bekessy, S. A., M. C. Runge, A. M. Kusmanoff, D. A. Keith, and B. A. Wintle. 2018. “Ask Not What Nature Can Do for You: A Critique of Ecosystem Services as a Communication Strategy.” *Biological Conservation* 224: 71–74.
- Benda-Beckmann, F. v. 2002. “Who’s Afraid of Legal Pluralism?” *The Journal of Legal Pluralism and Unofficial Law* 34: 37–82.
- Berman, P. S. 2007. “Global Legal Pluralism.” *Southern California Law Review* 80: 1155–1238.
- Berry, T. 1999. *The Great Work: Our Way into the Future*. New York: Three Rivers Press.
- Binner, A., G. Smith, I. Bateman, B. Day, M. Agarwala, and A. Harwood. 2017. *Valuing the Social and Environmental Contribution of Woodlands and Trees in England, Scotland and Wales*. Edinburgh: Forestry Commission.
- Boyd, D. R. 2017. *The Rights of Nature: A Legal Revolution That Could save the World*. Toronto: ECW Press.
- Brems, E. 2017. “Legal Pluralism as a Human Right and/or as a Human Rights Violation.” In *Human Rights Encounter Legal Pluralism: Normative and Empirical Approaches*. *Oñati International Series in Law and Society*, edited by G. Corradi, E. Brems and M. Goodale, 23–39. Oxford: Hart Publishing.
- Brondizio, E. S., J. Settele, S. Díaz, and H. T. Ngo, eds. 2019. *Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*. Bonn: IPBES.
- Brundtland, G. H. 1987. *Report of the World Commission on Environment and Development: Our Common Future*. Geneva: World Commission on Environment and Development.
- Burdon, P. D. 2015. *Earth Jurisprudence: Private Property and the Environment*. Abingdon: Routledge.
- CBD. 2000. *Sustaining Life on Earth: How the Convention on Biodiversity Promotes Nature and Human Well-Being*. Montreal: Secretariat of the Convention on Biological Diversity.
- Charpleix, L. 2018. “The Whanganui River as Te Awa Tupua: Place-Based Law in a Legally Pluralistic Society.” *The Geographical Journal* 184 (1): 19–30.
- Chaudhary, S., A. McGregor, D. Houston, and N. Chettri. 2015. “The Evolution of Ecosystem Services: A Time Series and Discourse-Centred Analysis.” *Environmental Science and Policy* 54: 25–34.
- Cooper, N., E. Brady, H. Steen, and R. Bryce. 2016. “Aesthetic and Spiritual Values of Ecosystems: Recognising the Ontological and Axiological Plurality of Cultural Ecosystem ‘Services.’” *Ecosystem Services* 21: 218–229.
- Cullinan, C. 2002. *Wild Law: A Manifesto for Earth Justice*. Cambridge: Green Books.
- Cullinan, C. 2010. “The Legal Case for the Universal Declaration.” <https://therightsofnature.org>.
- Delabre, I., E. Boyd, M. Brockhaus, W. Carton, T. Krause, P. Newell, G. Y. Wong, and F. Zelli. 2020. “Unearthing the Myths of Global Sustainable Forest Governance.” *Global Sustainability* 3: e16.
- Dembour, M.-B. 2010. *Who Believes in Human Rights? Reflections on the European Convention*. Cambridge: Cambridge University Press.
- Diaz, S., B. E. S. B. Bemissew, S. J. Carabias, C. Joly, and M. Lonsdale, Others. 2015. “The IPBES Conceptual Framework: Connecting Nature and People.” *Current Opinion in Environmental Sustainability* 14: 1–16.
- Douglas, W. O. 1965. *A Wilderness Bill of Rights*. New York: Little Brown.
- Earth Law Center. 2020. *Towards the Adoption of a Rights-Based Approach: Incorporating the Rights of Nature into the Post-2020 Global Biodiversity Framework of the CBD*. Boulder: Earth Law Center.

- Feindt, P. H., and A. Oels. 2005. "Does Discourse Matter? Discourse Analysis in Environmental Policy Making." *Journal of Environmental Policy and Planning* 7 (3): 161–173.
- Fish, R., A. Church, and M. Winter. 2016. "Conceptualising Cultural Ecosystem Services: A Novel Framework for Research and Critical Engagement." *Ecosystem Services* 21: 208–217.
- Griffiths, J. 1986. "What is Legal Pluralism?" *The Journal of Legal Pluralism and Unofficial Law* 18 (24): 1–55.
- Hajer, M. 1995. *The Politics of Environmental Discourse. Ecological Modernization and the Policy Process*. Oxford: Clarendon Press.
- Hajer, M., and M. Versteeg. 2005. "A Decade of Discourse Analysis of Environmental Politics: Achievements, Challenges, Perspectives." *Journal of Environmental Policy and Planning* 7 (3): 175–184.
- Iorns Magallanes, C. J. 2015. "Nature as an Ancestor: Two Examples of Legal Personality for Nature in New Zealand." *VertigO - La Revue Electronique en Sciences de l'Environnement [En Ligne]*, Hors-Série 22: Septembre 2015. <http://journals.openedition.org/vertigo/16199>
- IPBES. 2013. *Conceptual Framework for the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*. Decision IPBES-2/4. Bonn: Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.
- Kauffman, C. M., and P. L. Martin. 2017. "Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail." *World Development* 92: 130–142.
- Kauffman, C. M., and P. L. Martin. 2019. "How Courts Are Developing River Rights Jurisprudence: Comparing Guardianship in New Zealand, Colombia, and India." *Vermont Journal of Environmental Law* 20 (4): 260–289.
- Kinkaid, E. 2019. "Rights of Nature' in Translation; Assemblage Geographies, Boundary Objects, and Translocal Social Movements." *Transactions of the Institute of British Geographers* 44 (3): 555–570.
- Krause, T., and R. M. Nielsen. 2019. "Not Seeing the Forest for the Trees: The Oversight of Defaunation in REDD + and Global Forest Governance." *Forests* 10 (4): 344.
- Kull, C. A., X. A. de Sartre, and M. Castro-Larrañaga. 2015. "The Political Ecology of Ecosystem Services." *Geoforum* 61: 122–134.
- Lalander, R. 2016. "The Ecuadorian Resource Dilemma: Sumak Kawsay or Development?" *Critical Sociology* 42 (4-5): 623–642.
- Lalander, R. 2017. "Ethnic Rights and the Dilemma of Extractive Development in Plurinational Bolivia." *The International Journal of Human Rights* 21 (4): 464–481.
- Leopold, A. 1949. *A Sand County Almanac*. New York: Ballantine Books.
- Lewis, S. L., and M. A. Maslin. 2015. "Defining the Anthropocene." *Nature* 519 (7542): 171–180. doi:[10.1038/nature14258](https://doi.org/10.1038/nature14258).
- Lövbrand, E., and J. Stripple. 2011. "Making Change Governable: Accounting for Carbon as Sinks, Credits and Personal Budgets." *Critical Policy Studies* 5 (2): 187–199.
- Lovelock, J. 2006. *The Revenge of Gaia: Earth's Climate Crisis and the Fate of Humanity*. New York: Basic Books.
- Maloney, M. 2016. "Building an Alternative Jurisprudence for the Earth: The International Rights of Nature Tribunal." *Vermont Law Review* 41: 129–142.
- Marshall, P. 1996. *Nature's Web: Rethinking Our Place on Earth*. New York: M E Sharpe
- MEA. 2005. *Ecosystems and Human Wellbeing*. Washington, DC: Island Press.
- Merry, S. E. 1988. "Legal Pluralism." *Law & Society Review* 22 (5): 869–896.
- Merry, S. E. 2006. "Transnational Human Rights and Local Activism: Mapping the Middle." *American Anthropologist* 108 (1): 38–51.
- Merry, S. E. 2014. "Global Legal Pluralism and the Temporality of Soft Law." *The Journal of Legal Pluralism and Unofficial Law* 46 (1): 108–122.
- Michaels, R. 2009. "Global Legal Pluralism." *Annual Review of Law and Social Science* 5 (1): 243–262.
- Naess, A. 2005. *The Selected Works of Arne Naess*. New York: Springer.

- Nash, R. F. 1989. *The Rights of Nature: A History of Environmental Ethics*. Madison: University of Wisconsin Press.
- Nielsen, T. D. 2014. "The Role of Discourses in Governing Forests to Combat Climate Change." *International Environmental Agreements: Politics, Law and Economics* 14 (3): 265–280.
- Sage, C., and M. Woolcock. 2012. "Introduction. Legal Pluralism as a Development Policy: Scholars and Practitioners in Dialogue." In *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*, edited by B. Z. Tamanaha, C. Sage, and M. Woolcock, 1–17. Cambridge: Cambridge University Press.
- Santos, B. d. S. 1987. "Law: A Map of Misreading: Toward a Post-Modern Conception of Law." *Journal of Law and Society* 14 (3): 279–302.
- Santos, B. d. S. 2018. *The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South*. Durham: Duke University Press.
- Schwartz, S. H. 2012. "An Overview of the Schwartz Theory of Basic Values." *Online Readings in Psychology and Culture* 2 (1): <https://doi.org/10.9707/2307-0919.1116>.
- Sezgin, Y. ed. 2010. "Human Rights and Legal Pluralism." *The Journal of Legal Pluralism and Unofficial Law* 42 (60): 5–40.
- Singer, P. 1975. [2015] *Animal Liberation: A New Ethics for Our Treatment of Animals*. London: The Bodley Head.
- Small, N., M. Munday, and I. Durance. 2017. "The Challenge of Valuing Ecosystem Services That Have No Material Benefits." *Global Environmental Change* 44: 57–67.
- Stone, C. D. 1972. "Should Trees Have Standing? Toward Legal Rights for Natural Objects." *Southern California Law Review* 45: 450–501.
- Tanasescu, M. 2016. *Environment, Political Representation, and the Challenge of Rights*. London: Palgrave Macmillan.
- Tola, M. 2018. "Between Pachamama and Mother Earth: Gender, Political Ontology and the Rights of Nature in Contemporary Bolivia." *Feminist Review* 118 (1): 25–40.
- Twining, W. 2012. "Legal Pluralism 101." In *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*, edited by B. Z. Tamanaha, C. Sage, and M. Woolcock, 112–128. Cambridge: Cambridge University Press.
- UN ECOSOC. 2000. *Report on the Fourth Session of the Intergovernmental Panel on Forests*. 2000/35. New York: United Nations Economic and Social Council.
- UN ECOSOC. 2017. *United Nations Strategic Plan for Forests 2017–2030 and Quadrennial Programme of Work of the United Nations Forum on Forests for the Period 2017–2020*. E/RES/2017/4. New York: United Nations Economic and Social Council.
- UN FAO. 2020. *The State of the World's Forests: Forests, Biodiversity and People*. Rome: Food and Agriculture Organization.
- UN General Assembly. 2017. *Harmony with Nature*. Report of the Secretary General A/72/175. New York: United Nations General Assembly.
- UNPFII. 2010. *Study on the Need to Recognise and Respect the Rights of Mother Earth*. E/C.19/2010/4. New York: Indigenous Peoples and Development Branch/Secretariat of the Permanent Forum on Indigenous Issues.
- Vanhulst, J., and A. Beling. 2014. "Buen Vivir: Emergent Discourse within or beyond Sustainable Development?" *Ecological Economics* 101 (C): 54–63.
- Vogt, W. 1948. *Road to Survival*. New York: William Sloan Association.
- Waitangi Tribunal. 2011. *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity*. Te Taumata Tuatahi. Wellington: Legislation Direct.
- Watson, I. 2015. *Aboriginal Peoples, Colonialism and International Law*. Raw Law. London: Routledge.
- Weston, B. H., and D. Bollier. 2013. *Green Governance: Ecological Survival, Human Rights and the Law of the Commons*. Cambridge: Cambridge University Press.
- Westra, L. and M. Vilela, eds. 2014. *The Earth Charter, Ecological Integrity and Social Movements*. London: Routledge.

- Woodman, G. R. 1996. "Legal Pluralism and the Search for Justice." *Journal of African Law* 40 (2): 152–167.
- Youatt, R. 2017. "Personhood and the Rights of Nature: The New Subjects of Contemporary Earth Politics 1." *International Political Sociology* 11 (1): 39–54.
- Zelli, F., A. Gupta, and H. Van Asselt. 2013. "Institutional Interactions at the Crossroads of Trade and Development: The Dominance of Liberal Environmentalism?" *Global Governance: A Review of Multilateralism and International Organizations* 19 (1): 105–118.
- Zenker, O. and M. V. Hoehne, eds. 2018. *The State and Paradox of Customary Law in Africa*. Abingdon: Routledge.